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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,834	04/04/2002	Jeremy Marshall	3003-1010	5293
466	7590	06/09/2005	EXAMINER	
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			WEBB, SARAH K	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,834

Applicant(s)

MARSHALL ET AL.

Examiner

Sarah K Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1,6, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,324,303 (Strong et al.) in view of US Patent No. 3,651,972 (Itoh).

Strong discloses a combined lancet and cap device. As best shown in Figure 3, the cap (5) is integrally formed with the lancet body (3) at connection piece (11). Strong explains that the cap and lancet are integrally molded of plastic material (column 6, lines 44-46). The cap is designed to be detachable from the lancet body by twisting and pulling, so that the piece (11) will break at section (23) (column 6, lines 44-54). The cap conceals the needle tip (7) before removal, as in Figures 3 and 4, and then is connected to the lancet so that the needle (7) can pass through aperture (17), as in Figure 9C. The lancet body includes projections (13) that prevent it from rotating relative to the firing device (column 6, lines 1-5).

The cap includes two sets of projections (21 and 29) that are adapted to engage "abutments" defined on either side of grooves (25,27) on the lancet body (3) (column 6, lines 60-65 and column 7, lines 5-15) when both are removed from the firing device, as illustrated in Figure 9e. As shown in Figure 3, the legs are bent inwardly to have a reduced diameter at the site of the projections, so that the projections will engage the

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abutments in the lancet when the cap is removed from the firing device. The legs are move outwardly to a larger diameter to fit over the circular end of the firing device.

Strong fails to form the cap to have an elliptical cross section at the site of the connection means. Itoh discloses a resilient cap (104) in Figure 6 that includes a connection means (111) on the inside surface that interlocks with another device (101). The opening of the cap has an elliptical cross section, as shown in Figure 7, and the connection means are located on its minor axis. Itoh explains that the cap is squeezed along the major axis (P in Figure 10) to deform the cap to a more circular shape and disengage the connection means from the device (101). It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the cap of Strong to have an elliptical cross section, as taught by Itoh, as this structure allows the user to easily engage/disengage the connection means of a resilient cap with a device. Forming the cap of Strong to have an elliptical shape would inherently allow the cap to perform as recited in the claims.

Response to Arguments

2. Applicant's arguments filed 4/1/05 have been fully considered but they are not persuasive. In response to applicant's argument that Itoh is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Itoh is directed toward a cap with a connection structure that allows the cap to be selectively attached/detached onto the end of another cylindrical body. The cap of Itoh is analogous to the cap of Strong, since both caps have a

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connection means on the inner surface that interlocks with a separate object.

Therefore, the combination of Strong and Itoh is proper.

3. Applicant also argues that the projections (29) of Strong are carried on flexible arms (19). The arms are an integral portion of the cap (5) structure, so the projections (29) are also considered to be an integral portion of the cap (5). They are also located on the inside surface of the cap.

4. Applicant argues that the projections of Strong are not carried on the minor axis of an elliptical shaped cap. In response to applicant's arguments against the Strong reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The rejection of claim 1 is based on the combination of Strong and Itoh. Itoh clearly shows in Figure 7 that the connection means should be located on the minor axis of an elliptical cap, as shown in Figure 7. The elliptical cap of Itoh is capable of being pressed into a circular shape so that it can be fitted over a circular body.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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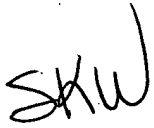
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K Webb whose telephone number is (571) 272-4706. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SKW
6/3/05



JULIAN W. WOO
PRIMARY EXAMINER